IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

ROBERT DI GIAN, Plaintiff	:	CIVIL ACTION
v.	:	
WILLIAM CLINTON, Defendant	:	NO. 92-5494

MEMORANDUM

Reed, J.

January 7, 1993

At the time plaintiff Robert Di Gian ("Di Gian") filed this pro se declaratory action, defendant William Clinton (hereinafter referred to as "President-elect Clinton") was the Democratic Party's candidate for President of the United States. Plaintiff is suing to disqualify President-elect Clinton's candidacy. Currently before me are President-elect Clinton's motion to dismiss the complaint (Document No. 5), and Di Gian's motion to strike President-

elect Clinton's memorandum in support of his motion to dismiss (Document No. 9).

As everyone is aware, the election for members of the Electoral College was held on November 3, 1992, and Pennsylvania voters chose Presidential Electors pledged to vote for President-elect Clinton. Therefore, plaintiff's challenge to President-elect Clinton's candidacy has become moot. However, even if this decision were handed down before November 3, 1992, plaintiff's claim must fail for lack of jurisdiction.

I. DISCUSSION

A. Plaintiff's Complaint

Di Gian seeks a declaration that President-elect Clinton is disqualified from holding the office of President of the United States. His pleadings in this case are extremely long-winded and barely penetrable. This introduction attempts

to pull from his complaint and memorandum of law Di Gian's legal and factual bases for his claim.

Di Gian would have this Court "resolve and set firm for future Political Campaigns what is required of all candidates not written but presumed in relation to the standards of morals and demanded ethical behavior of [presidential] candidates." Complaint, at paragraph 11. Di Gian claims that such resolution would be "in the best interest and welfare of the public[,]" and that this "Court has a charged duty to uphold the values that are mandated in the Constitution for the United States of America..." Id. at paragraphs 11-12.

The essence of Di Gian's claim apparently is that President-elect Clinton's character is not "free and clear of any and all doubts" because of

some purported misconduct involving "[s]ervice to [c]ountry and using...illegal controlled substances." Complaint, at paragraph 6. In support of his claim, Di Gian states that President-elect Clinton:

> has transported himself outside the sovereign borders of his native United States of America to international domains and fields of actions to commit these illegal acts abroad. These seditious acts against the United States in time of conflict or war clearly as a laser shines concentrates the intent for incitement of public disorder and rebellion against the United States Government, giving aid and comfort to the enemy....Plaintiff has presented facts that have been represented by defendant himself that he used illegal substances[.]

Plaintiff's Memorandum of Law in Opposition to Defendant's Motion to Dismiss, at 2 (hereinafter "Plaintiff's Memorandum of Law").

Di Gian requests "SPECIAL EXTRAORDINARY EMERGENCY RELIEF...to put to rest this challenge to the candidacy of William Clinton as to his morals and/or qualifications." Id. at 3 (emphasis in the original). He asks that this Court "declare that defendant has committed high crimes and misdemeanors of a kind or type to disqualify his candidacy for President" and that he be awarded "his cost for prosecution of this cause" and such other relief as the Court deems proper. Id. at 3-4.

B. Standing

Di Gian bases federal jurisdiction on the existence of a federal question under Articles II and IV of the Constitution, 28 U.S.C. § 1331, and on the Declaratory Judgments Act, 28 U.S.C. §§ 2201-02. His complaint alleges:

> 1. Plaintiff, Robert Di Gian, is an inhabitant of the state of Pennsylvania...
> 2. Defendant, William Clinton, is an individual engaged as a registered Federal Election Commission Candidate in the current 1992 General Election for the Office of President for the United States of America....
> ....
> 7. Defendant did extend his hand to take upon himself money from the Federal Election Commission which Plaintiff has in times past permitted along with others to finance Presidential Elections as is the case in the 1992 General Election.

Complaint, at paragraphs 1, 2 & 7 (some typographical errors in original corrected).

It is fundamental that a federal court lacks jurisdiction to hear any matter that is not a justiciable case or controversy under Article III of the Constitution, and that an action is not

justiciable if the plaintiff does not have standing to sue. Bender v. Williamsport Area School District, 475 U.S. 534, 541-42 (1986). "In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues." Warth v. Seldin, 422 U.S. 490, 498 (1975). To have standing in federal court, the Supreme Court has held that a party must demonstrate that: (1) he personally has suffered a concrete injury in fact which is distinct and palpable rather than merely abstract, conjectural or hypothetical, (2) the injury is causally connected to the challenged conduct, and (3) the injury is likely to be redressed by a favorable decision. Lujan v. Defenders of Wildlife, _____ U.S. _____, 112 S.Ct 2130, 2136 (1992); Simon v. Eastern

Kentucky Welfare Rights Organization, 426 U.S. 26, 38 & 41 (1976). Further, the Supreme Court has stated that:

> [E]ven when the plaintiff has alleged redressable injury sufficient to meet the requirements of Art. III, the Court has refrained from adjudicating "abstract questions of wide public significance" which amount to "generalized grievances," pervasively shared and most appropriately addressed in the representative branches.

Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464, 474-75 (1982) (citations omitted) (citing Warth, 422 U.S. at 499-500).

At first glance, Di Gian's references in his complaint to the financing of presidential candidates through the Federal Election Commission appear to convey the notion that Di Gian

is claiming taxpayer standing. However, in his Memorandum of Law, DI Gian states that he "has never claimed to be acting in the capacity of a taxpayer..." Memorandum of Law, at 7. Instead, Di Gian states that he "is suing as a subject citizen whose very existence and well being in all probability will be drastically affected by the defendant should he continue on and take office as Chief Ministerial Officer of the United Stats of America." Memorandum of Law, at 5 (some typos in original corrected).

It requires little legal analysis to determine that Di Gian cannot meet the requirements for standing. Di Gian argues that he served in the U.S. armed forces in Vietnam as a combat infantry officer, and, therefore, President-elect Clinton's candidacy has caused him "distinct and most palpable [] injuries."

Memorandum of Law, at 3. It appears that Di Gian is claiming some sort of psychological distress that relates in some way to President-elect Clinton's military record. Di Gian's complaint thus is similar to that in Valley Forge which the Supreme Court characterized as follows:

> Although respondents claim that the Constitution has been violated, they claim nothing else. They fail to identify any personal injury suffered by them as a consequence of the alleged constitutional error, other than the psychological consequence presumably produced by observation of conduct with which one disagrees. That is not an injury sufficient to confer standing under Art. III, even though the disagreement is phrased in constitutional terms.

Valley Forge, 454 U.S. at 485-86 (emphasis is the Court's); see also Schlesinger v. Reservists Committee to

Stop the War, 418 U.S. 208 (1974); United States v. Richardson, 418 U.S. 166 (1974).

Di Gian does allege that "[f]ederal [j]urisdiction and [his] rights are concrete" and, "thus this action will by design impregnate the Court of the United States of America and come to swift terms concerning these matters of National scope." Complaint, at paragraph 8. He states further:

> Let it be known that fundamentally this is a case and a controversial controversy that is also highly justiciable in profile and well suited under the Article III of the Constitution of which plaintiff has firm standing and sufficient stake and personal stake to make same plaintiff a proper party to invoke judicial resolution of this dispute and to loose the full exercise of the Court's remedial powers to bring the intended correction by granting of relief in the plaintiff's behalf.

Plaintiff's Memorandum of Law, at 2. In sum, Di Gian's complaint and memorandum of law seek to establish standing by virtue of chaotic oratorical flourish and dramatic, if imprecise, metaphor. However, so far as this Court is aware, the mere length of participial phrases is insufficient to establish standing. And, without standing, this Court is incapable of becoming "impregnated" with jurisdiction.

I conclude that Di Gian's alleged injury is not concrete and particularized, but is a generalized grievance which, whether or not pervasively shared, does not confer standing. Furthermore, even if he had standing, it is hardly conceivable that this Court could afford Di Gian any relief at all. Indeed, beyond the legal qualifications for holding the office of

President of the United States that are set forth in the Constitution itself, the task of deciding whether a candidate is qualified to be President is soundly committed to the political process.

C. **Plaintiff's Motion to Strike**

Di Gian cites no legitimate grounds for his motion to strike President-elect Clinton's Memorandum of Law in Support of his Motion to Dismiss. A review of Di Gian's motion, in fact, makes it clear that it is nothing more than a surreply to President-elect Clinton's motion to dismiss. Therefore, Di Gian's motion to strike will be denied.

III. CONCLUSION

For the reasons discussed above, President-elect Clinton's motion to dismiss will be granted, and Di Gian's motion to strike will be denied.

An appropriate Order follows.

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ORDER

AND NOW, this 7th day of January, 1993, upon consideration of defendant's motion to dismiss plaintiff's complaint for lack of federal jurisdiction (Document No. 5), and plaintiff's motion to strike defendant's memorandum in support of defendant's motion to dismiss the complaint (Document No.9), and the responses of the parties thereto, having accepted all of the allegations in the complaint as true, having viewed them in the light most favorable to the

plaintiff, and having found that plaintiff has failed to establish standing for purposes of federal jurisdiction, it is hereby **ORDERED** that defendant's motion to dismiss is **GRANTED** and plaintiff's motion to strike is **DENIED.**

Plaintiff's complaint is hereby **DISMISSED WITH PREJUDICE.**

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LOWELL A. REED, JR., J.
1-11-93